

# Court suspends probation officer demotions

Move comes amid bias claims

By **Andrea Estes** GLOBE STAFF AUGUST 05, 2015

Trial court officials have indefinitely suspended plans to demote probation officers who failed a controversial new exam as five officers filed discrimination complaints charging that the test was biased against minorities.

Twelve acting chief probation officers — half of them minority members — had been facing the prospect of a demotion and pay cut on Monday after they failed the essay portion of the exam. But court officials sent them a curt e-mail on Friday, saying that their demotions had been postponed “until further notice.”

“We will update you on this issue when there is additional information,” court officials wrote. “Thank you for your attention in this matter.”

The promotional exam was supposed to provide a more objective and fair hiring system for the Probation Department after years of political patronage under former commissioner John J. O’Brien. But, after more than half of probation employees failed the essay portion of the test in March, some complained bitterly that the test had little to do with their jobs.

This week, the union that represents probation officers, NAGE, filed a grievance to permanently stop the demotions, which targeted probation employees who had been acting assistant chiefs for at least 18 months.

NAGE said demoting people for failing the test violated the union contract.

Trial court officials said they are reviewing the implication of the test results and “working on a final recommendation.

“The trial court administration understands that this is a difficult situation for the acting chief probation officers who did not pass, and is actively working on an appropriate resolution,” court officials said in a written statement.

Meanwhile, minority probation officers who failed the test have filed class action complaints with the Massachusetts Commission Against Discrimination, the first step before a lawsuit can be filed in court.

Eduardo Rosado, a 16-year veteran of the department and one of the five who complained, said he passed an earlier test that would have allowed him to be promoted to chief probation officer in 2012.

But now he is ineligible for promotion after failing the assistant chief's test.

Rosado, who works at Lowell District Court, said he was shocked when he learned he failed the exam, which included multiple choice and exam sections.

"I felt very confident I would pass," said Rosado, noting that the results are supposed to be used to decide promotions for three years. "I would be excluded from many opportunities. I'm just looking for an opportunity."

Harold Lichten, the lawyer representing the minority probation officers, said six of the eight minority probation officers now working as acting assistant chiefs failed the test. By comparison, only one-fifth of the white acting assistant chiefs failed, he said.

"All have been performing the jobs successfully with good reviews during these 18 months," said Lichten, who wants the trial court to throw out the results and come up with a new exam that "actually tests for the real attributes that are needed to be a good supervisory probation officer."

The trial court has made a series of embarrassing mistakes as it tries to reform the Probation Department after the departure of O'Brien, who was convicted in federal court for creating a sham hiring and promotional policy that gave jobs to politically connected candidates whether they were qualified or not.

First, 200 out of 362 employees who took the March test for promotions in the district and superior courts failed, raising questions about whether the test was flawed.

The trial court asked the company that had devised and administered the test, Industrial/Organizational Solutions Inc. of Illinois, to audit the results. The company found nothing wrong — except that the failure rate was actually higher than originally believed. Because of an arithmetic mistake, one applicant who had been notified he had passed actually failed.

Then, last month court officials accidentally shredded the essay portions of exams taken by probation officers looking to move up in the Probate and Family Court before the exams could be graded. The trial court was forced to notify 32 test-takers they would have to take the essay test again.

The company that wrote the tests has already been at the center of a contentious battle over allegations of racial bias once before, one that ended at the Supreme Court in 2009.

When minority firefighters applying for promotions in the New Haven Fire Department complained that the 2003 test devised by I/O Solutions was racially discriminatory and threatened to file suit, the city threw out the results.

White and Hispanic firefighters who passed the test but were not promoted then sued, claiming they were victims of reverse discrimination, and ultimately won.

Should the Massachusetts trial court decide to throw out the essay portion of the March exam, it could face similar complaints from white candidates who passed the test but were not promoted.

The trial court expects to pay I/O Solutions close to \$100,000 for the contested test and several others, along with \$11,900 for the audit of the March exam.

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